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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 IN RE: PORTFOLIO RECOVERY
11 ASSOCIATES, LLC, TELEPHONE
12 CONSUMER PROTECTION ACT
13 LITIGATION

Case No. 11md2295 JAH(BGS)

This document relates to:
All member cases

ORDER RE: STAY

14 This Court, on May 20, 2014, granted defendants' motion to stay this Telephone
15 Consumer Protection Act ("TCPA") action on primary jurisdiction grounds, pending a
16 decision by the Federal Communications Commission ("FCC") on the meaning of the
17 term "capacity" as used in the TCPA and directed the parties to file a joint status report
18 in re regards to the propriety of allowing the stay to remain in place no later than
19 November 19, 2014. *See* Doc. # 144. After receipt of the parties' first and second joint
20 status reports, this Court extended the stay, requiring the parties to submit a joint status
21 report by May 20, 2015. *See* Docs. # 179, 205. The third joint status report was filed on
22 May 20, 2015. *See* Doc. # 228.

23 Plaintiffs, in the second joint report, again contend that the stay should be lifted
24 because the FCC is no closer to resolving the statutory interpretation issues raised by
25 defendant upon which the stay was based. *Id.* at 2. Plaintiffs note the FCC has not
26 responded to the only relevant petition pending¹ before it nor has it done anything to

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28 ¹ The only petition pending before the FCC is the ACA International Petition for Rulemaking which
plaintiffs point out is no longer on the FCC's Circulation List that lists the most active proceedings before
it. Doc. # 204 at 1 & n.1.

1 suggest a response is imminent. Id. at 3. Plaintiffs point out that three courts have denied
 2 requests for stay pending the FCC ruling on the capacity issue. Id. at 4 (citing Molnar v.
 3 NCO Fin. Sys., 2015 WL 1906346 *3 (S.D.Cal. 2015); Meyer v. Bebe Stores, Inc., 2015
 4 WL 1223658 *5 (N.D.Cal. Mar. 17, 2015); Harnish v. Frankly Co., 2015 WL 1064442
 5 (N.D.Cal. 2015)). Plaintiff claims the current stay interrupted the parties' settlement
 6 discussions which cannot proceed until the stay is lifted. Id. at 5. Thus, plaintiffs contend
 7 the stay here is threatening to become "interminable" and should be lifted.² Id.

8 Defendant, on the other hand, claims "the FCC is progressing with its work on the
 9 TCPA" and note that most of the cases stayed under the primary jurisdiction doctrine
 10 have remained stayed. Id. at 9-10 (citing Wahl v. Stellar Recovery, Inc., No. 14-cv-6002-
 11 FPG (W.D.N.Y. Dec. 17, 2014); Lee v. LoanDepot.com, LLC, 14-1084-MLB (D.Kan. Jan.
 12 29, 2015); Gensel v. Permant Techs., Inc., 2015 U.S. Dist. LEXIS 99735 *6 (E.D.Wis.
 13 Jan. 28, 2015); Beck Simmons LLC v. Francotyp-Pastalia, Inc., No. 4:14cv01161
 14 (E.D.Mo. Feb. 17, 2015); Gusman v. Comcast Corp., No. 3:13cv1049 GPC (N.D.Cal.
 15 May 21, 2014); Barrera v. Comcast Holdings Corp., No. 3:14cv0343 TEH (N.D.Cal.
 16 May 12, 2014)). Defendant further notes that at least two new cases have been stayed
 17 for the same reason. Id. at 11 (citing Story v. Mammoth Mt. Ski Area, LLC, 2:14cv02422
 18 (E.D.Cal. May 13, 2015); Kristensen v. Credit One Bank, No. C14-7963 (C.D.Cal.
 19 May 7, 2015)). Defendants contend the three cases cited by plaintiff are not persuasive
 20 because the issues presented there are not analogous to the instant case. Id. at 12.

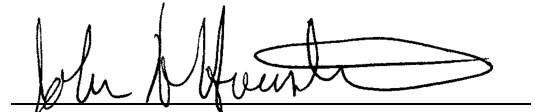
21 . Despite the apparent lack of movement before the FCC, this Court is unconvinced
 22 that the delay in this case is threatening to become interminable, as suggested by plaintiff.
 23 See Doc. # 228 at 5. This Court finds that continuing the stay of proceedings in this case
 24 is again appropriate because the FCC is still in the process of utilizing its recognized
 25 expertise in determining an issue that is currently pending before this Court, thereby
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27 ² Plaintiffs also present arguments concerning an alleged further violation of the TCPA by defendant
 28 against plaintiff Danny Allen which defendant contends is irrelevant to the issue of whether to continue thea
 stay. See Doc. # 228 at 7-8, 13-15. This Court agrees with defendant. Therefore, plaintiffs' arguments
 concerning plaintiff Allen's new factual allegations will not be addressed.

1 satisfying the prerequisites for application of the primary jurisdiction doctrine. *See*
2 Maronyan v. Toyota Motor Sales, U.S.A., Inc., 658 F.3d 1038, 1048-49 (9th Cir. 2011).
3 This Court further finds again that the benefit of FCC guidance on the issue of the
4 definition of the term “capacity” necessitates a further brief stay of this action pending the
5 FCC’s resolution of that issue which is presently before it. Accordingly, IT IS HEREBY
6 ORDERED that:

- 7 1. This case shall continue to be **STAYED** until further order of the Court;
- 8 2. The parties shall file a joint status report **no later than July 24, 2015**, to
9 advise the Court as to the status of the matters currently before the FCC;
10 and
- 11 3. Should the FCC resolve the matters pending before it prior to the July 24,
12 2015 deadline, the parties shall jointly advise the Court **no later than five**
13 **(5) days** after the FCC issues such resolution.

14 DATED: June 2, 2015



16 JOHN A. HOUSTON
17 United States District Judge